IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 151 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

INDEQUIP ENGINEERING CO. LTD.

Appearance:

MR MANISH R BHATT for Petitioner

MR MJ SHAH FOR JP SHAH for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 28/09/2000

ORAL JUDGEMENT (Per D.M. DHARMADHIKARI, C.J.)

1. At the instance of the Department, the following two questions of law have been referred:

"1. Whether, penalty under section 271(1)(a) of the Income-tax Act, 1961 is leviable with reference to the total assessed tax or the tax in relation to the escaped income?

2. Whether, the decision of the Appellate Tribunal in confirming calculation of the penalty by the Commissioner of Income-tax (Appeals) is correct in law?"

2. The question involved is whether the assessee has filed the return in time and whether the penalty calculated on the basis of the entire tax liability could be levied or only on the basis of the tax which is found due as a result of the notice under Section 148. Learned counsel for the parties bring to our notice the decision of Division Bench of this Court in Commissioner of Income Tax v. Sayaji Iron Works Quarry Private Limited reported in 244 ITR 628 in which the two questions which have been raised in the present reference are squarely covered. It has been held that `assessed tax' for the purpose of computation of penalty under Section 271(1) of the Act would be the difference in the first assessment and the assessment on reopening.

3. Consequently, we answer both the questions in favour of the assessee and against the Revenue.

There shall be no order as to costs.

(D.M. DHARMADHIKARI, C.J.)

(A.R. DAVE, J)

[sndevu]